IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INCOME TAX REFERENCE NO. 136 OF 1997.

The Commissioner of Income TaX ... Applicant.

V/s.

M/s Gill & Co. .. Respondent.

Shri Pankaj Kapoor with Shri Ashok Kotangale and A.S. Rao for the applicant.

Shri Nishant Thakkar i/b Mulla and Mulla for the respondent.

CORAM : V.C.DAGA AND J.P. DEVADHAR, JJ.

DATED : 17.10.2005.

P.C. :

. By this reference under section 256 (1) of the Income-tax Act, 1961, the Income-tax Appellate Tribunal has referred the following question of law for the opinion of this Court:

> Whether on the facts and in the circumstances of the case, the Tribunal was right in law in holding that the disallowance out of the salaries and perquisites to the employee-directors should be made u/s 40(c) of the Act and not u/s 40A (5) of the Act?"

. Learned Counsel for the parties agreed that the above question is already answered by the Division Bench of this Court in the case of **CIT vs.Hico Products Ltd. (1993) 201 ITR 567 (Bom)** in the affirmative i.e. in favour of the assessee and against the Revenue. In this view of the matter, we

answer the above question in the affirmative i.e.

in favour of the assessee and against the Revenue.

. Reference accordingly stands disposed of

with no order as to costs.

(J.P. DEVADHAR,J.) **(V.C. DAGA,J.)**